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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,433	05/18/2007	Jay S. Walker	03-056	3731
22927 7590 08/03/2010 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER				
BUTLER, MICHAEL E				
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3653				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,433

Applicant(s)

WALKER ET AL.

Examiner

MICHAEL BUTLER

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 7-21 is/are pending in the application.
4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 7-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restriction

1. Newly submitted claims 19-21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-3 and 7-18 drawn to a method for vending combination products contingent, classified in class 700, subclasses 244.
- II. Claims 19-21 drawn to an apparatus for vending product under distributed control of plural dispensing units, classified in class 700, subclass 242.

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). Invention II has separate utility for controlling separate vending machines. Invention I, process may be used vending separate for receiving vending discounts on combinations.

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. No claims appear to be linking claims.

6. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 19-21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell et al.

US20020116262A1 which discloses all the claimed elements including:

(re: 1) A method comprising:
providing an offer, via an interface at a vending machine (§133), for a benefit in exchange for an email address (§134); receiving, via the interface at the vending machine, and in response to the providing of the offer, an email address (§135); and after receiving the email address, transmitting a promotional message to the received email address, in which the promotional message includes a code that is redeemable for a benefit at the vending machine (§135)

(re: cl2) in which the receiving, via the interface at a vending machine, of the email address comprises: receiving a plurality of email addresses via the interface at the vending machine (§134)
(re: cl3) further comprising: validating the received email addresses (§136-password).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim(s) 7-11, 13-15, 17-18 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell US20020116262A1 in view of Yamaguchi US20010046851A1 wherein Mitchell discloses the elements previously discussed and further discloses:

(re: cl 7) A method comprising: receiving, by a controller and from a representative associated with the location at which the vending machine is placed, a set of email addresses (§35);

determining whether approval has been received (§35; §39);

and sending by the controller, a message via email transmission to each of the set of email addresses only if approval has been received (§39)

(re: cl 8) in which sending a message via email transmission to each of the set of email addresses comprises: sending the message to a predetermined address (§39)

(re: cl9) further comprising: receiving data representing a preference of a customer (§39);

determining an email address from the set of email addresses that corresponds to the customer (§35, §39);

determining a second message according to the preference (§39); and sending the second message via email transmission the email address that corresponds to the customer (§39)

(re: cl 10) further comprising: generating a promotion for the vending machine; and in which the step of sending a message comprises: accessing a database of consumer preferences (§36); determining, from the database, a set of recipients that have preferences corresponding to the promotion (§39);

and determining a respective email address for each of the set of recipients (§39);
and sending a message via email transmission to each of the respective email addresses, in which the message indicates the promotion (§39)
(re: cl 11) in which generating a promotion for the vending machine comprises: generating a promotion for the vending machine based on at least one revenue management factor (§39)
(re: cl 13) wherein the representative comprises a representative of a company associated with the location, wherein the set of e-mail addresses comprises a set of e-mail addresses for employees of the company, and wherein the at least one rule is established by the company (§30, 37, 38, 39 -the rewards and offers are set in the vending machines are by the employees of the company and include their electronic addresses)
(re: cl 14)(13) wherein at least a portion of the content of the message that promotes the vending machine comprises content defined by at least one of (i) the company, and (ii) one or more of the employees of the company (§30, 37, 38, 39 -the rewards and offers are set in the vending machines are by the employees of the company and include their electronic addresses).

Yamaguchi discloses:

identifying , by the controller, at least one vending machine to be associated with the set of email addresses ¶161;
determining by the controller, at least one rule defining restrictions on when a message may be sent to at least one of the email addresses ¶161; and sending a message via email transmission to each of the set of email addresses in compliance with the restrictions on when a message may be sent, in which the message includes content that promotes the vending machine ¶161.

(re: cl 15) wherein the content of the message that promotes the vending machine comprises an indication of a code that is operable, upon being input into the vending machine, to cause the vending machine to dispense a discounted unit of a product (§64-68, HTML program file is software code)
(re: cl 17) wherein the sending of the message via email transmission to each of the set of email addresses is conducted in response to a triggering of one or more sales thresholds at the vending machine ¶162.;
(re: cl 18) wherein the sending of the message via email transmission to each of the set of email addresses is conducted in response to an inventory level of a product in the vending machine ¶162.;

It would have been obvious at the time of the invention for Mitchell to select a specific vending machine and send an email to a vending machine to set up control parameters, pricing, and customer preferences as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell to operate under determined rule restrictions so as to send the message at a time when the vending machine needs modification as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell to activate the dispensing via a known operable code to facilitated dispensing of complicated or custom product combinations as desired on the HTML display as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell to send a message upon the triggering of one or more sales to alert operators to replenish the vending machine as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell to send a message in response to inventory level threshold to alert operators to replenish the vending machine as taught by Yamaguchi.

11. Claim(s) 12 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell US20020116262A1 in view of Maggard et al. 6021362 wherein Mitchell discloses the elements previously discussed and Maggard et al. further discloses:

(re: cl 12) wherein the benefit comprises a free unit of product dispensed by the vending machine upon input of the code into an interface of the vending machine (c3 L 38-53).

It would have been obvious at the time of the invention for Mitchell to dispense a free product to encourage purchase of the first product or to acquaint the operate under determined rule restrictions so as to send the message at a time when the vending machine needs modification as taught by Maggard et al..

12. Claim(s) 12 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell US20020116262A1 in view of Kaufman 6247612 wherein Mitchell discloses the elements previously discussed and Kaufman further discloses:

(re: cl 12) wherein the benefit comprises a free unit of product dispensed by the vending machine upon input of the code into an interface of the vending machine(c5 L 17-25).

It would have been obvious at the time of the invention for Mitchell to dispense a free product to encourage purchase of the first product or to acquaint the operate under determined rule restrictions so as to send the message at a time when the vending machine needs modification as taught by Kaufman.

13. Claim(s) 16 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell US20020116262A1 in view of Yamaguchi US20010046851A1 in further in view of Walker et al. 6397193 wherein Mitchell discloses the elements previously discussed and further discloses: Yamaguchi discloses:

identifying, by the controller, at least one vending machine to be associated with the set of email addresses ¶161; determining by the controller, at least one rule defining restrictions on when a message may be sent to at least one of the email addresses ¶161; and sending a message via email transmission to each of the set of email addresses in compliance with the restrictions on when a message may be sent, in which the message includes content that promotes the vending machine ¶161.

Walker et al. discloses:

(re: cl 16) wherein the content of the message that promotes the vending machine comprises an indication that a unit of beverage and a unit of snack may be purchased at the vending machine for one dollar (figure 4 - A1 plus C3).

It would have been obvious at the time of the invention for Mitchell to select a specific vending machine and send an email to a vending machine to set up control parameters, pricing, and customer preferences as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell to operate under determined rule restrictions so as to send the message at a time when the vending machine needs modification as taught by Yamaguchi.

It would have been obvious at the time of the invention for Mitchell in view of Yamaguchi to dispense a combination beverage and snack for a dollar to encourage purchase of the both products through incentive discount pricing to acquaint the operate under determined rule restrictions so as to send the message at a time when the vending machine needs modification as taught by Walker et al..

Response to Amendments/Arguments

14. The amendments were insufficient and arguments unpersuasive in overcoming the prior art rejections. The password is a code. The product is being offered for sale. The supplying of the email by the customer is responsive to that offer.

Identifying when messages may not be sent inherently defines time windows when messages may be sent by virtue of it being the Boolean complement. Those windows of time in which messages may be sent comprise a scheduling of messages. A scheduling may comprise windows of time-scheduling is not limited to specific trigger or send times. "Scheduling" is not so narrow as to specifying specific message send trigger times.

The vending machine communication was performed under the control of the controller, the email communication was sent to and from the controller, and the determination of whether conditions were met was performed in the controller.

Conclusion

15. Applicant's amendment necessitated the new grounds for rejection. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stefanos Karmis, can be reached on (571) 272-6744. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/M. E. B./
Examiner, Art Unit 3653

/Stefanos Karmis/
Supervisory Patent Examiner, Art Unit 3693